

EXHIBIT EE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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HACHETTE BOOK GROUP, INC.,
HARPERCOLLINS PUBLISHERS LLC,
JOHN WILEY & SONS, INC., and
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

vs. Case No. 1:20-cv-04160-JGK

INTERNET ARCHIVE and DOES 1
through 5, inclusive,

Defendants.
-----x

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REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
JEFFREY PRINCE
Thursday, June 9, 2022

Reported By: Lynne Ledanois, CSR 6811
Job No. 5255194

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Videotaped deposition of JEFFREY PRINCE,
taken in Bloomington, Indiana, commencing at
10:04 a.m. Eastern, on Thursday, June 9, 2022 before
Lynne Ledanois, Certified Shorthand Reporter No.
6811

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ALSO PRESENT:

David West, Videographer

1 BY MR. GRATZ: 11:20AM

2 Q You have that document before you in paper
3 form, Dr. Prince?

4 A Yes, I do.

5 Q What is the difference between a market 11:20AM
6 harm analysis and damages analysis?

7 A I haven't laid out the full details of that.
8 But I guess at a high level, the damages analysis, as
9 we discussed before, I'm looking at quantifying what
10 the damage was of different nature to an affected 11:20AM
11 party.

12 Here what I -- in the market harm
13 analysis, I'm talking about different ways in which
14 plaintiffs were harmed by Internet Archive's
15 actions. 11:21AM

16 Q Did you attempt to quantify that harm?

17 MS. STEINMAN: Objection.

18 THE WITNESS: I did not put a figure on
19 it, no.

20 BY MR. GRATZ: 11:21AM

21 Q Why not?

22 A My understanding is that was not part of the
23 scope of my report or the burden of my report.

24 Q Is that something that you would have been
25 able to do with the information that was available 11:21AM

1 to you if that had been something that you 11:21AM

2 understood to be part of the scope of your report?

3 MS. STEINMAN: Objection.

4 THE WITNESS: I'm not sure. I didn't

5 attempt to do that, so I'm not sure how that would 11:21AM

6 have gone if I had tried to do that.

7 BY MR. GRATZ:

8 Q Is the reason that you did not attempt to

9 quantify the harm that you identified in your report

10 that you did not consider such quantification to be 11:22AM

11 within the scope of what you were being asked to do

12 in this matter?

13 MS. STEINMAN: Objection. Go ahead.

14 THE WITNESS: Yes, I think that's a fair

15 way of putting it. My understanding was that the 11:22AM

16 burden was on the other side to establish there was

17 not harm.

18 So on my end, what I was asked to do is to

19 discuss, amongst other things, what the different

20 natures of harm were and the reasoning why those 11:22AM

21 would be there.

22 BY MR. GRATZ:

23 Q Does your report identify the size in

24 numbers of any of those harms?

25 MS. STEINMAN: Objection, the document 11:23AM

1 speaks for itself. 11:23AM

2 THE WITNESS: Again, I don't recall
3 putting forth a figure for any of the individual
4 harms that I put out. I think there's information
5 that may provide relevant information towards that, 11:23AM
6 but I don't believe I put forth a specific figure
7 for any of them.

8 BY MR. GRATZ:

9 Q Do you have any opinions about the size in
10 numbers of any of those harms? 11:23AM

11 MS. STEINMAN: Objection.

12 THE WITNESS: I believe that -- again, I
13 didn't give specific numbers, but I've indicated in
14 various places in the report that there's reason to
15 believe that those numbers are not de minimis. But 11:23AM
16 I don't give a specific figure.

17 BY MR. GRATZ:

18 Q Do you have any other opinions about the
19 size of those harms other than the ones we've talked
20 about already? 11:24AM

21 MS. STEINMAN: Objection.

22 THE WITNESS: Again, I think in the report
23 it's indicating that there's reason to believe that
24 the harm that was already experienced was
25 non-trivial. And then also as I lay out in the 11:24AM

1 not teach because I was running the department and an 4:36PM
2 institute.

3 I will be stepping down from the institute
4 this summer and then I'll be stepping down as chair
5 next year. 4:36PM

6 And so my steady state is I would teach
7 three classes a year, but that's been disrupted
8 because of my administrative roles.

9 Q Do you spend more time on your expert
10 witness work and consulting work or on your 4:36PM
11 teaching?

12 A As I said, now anything I do would be more
13 than teaching because I'm not teaching right now.
14 That would not be the case when I'm back to a
15 three-course load. 4:36PM

16 The other major component of my job is
17 research, which actually takes up most of my time.

18 Q That was going to be my next question.
19 About what percentage of your time do you
20 spend on your consulting work, including expert 4:36PM
21 witness testimony?

22 A Somewhere in the neighborhood of 20 percent.

23 Q In your work on your expert report, did
24 you attempt to numerically estimate the size of the
25 effect you believe Internet Archive's controlled 4:38PM

1 digital lending had on publisher's revenues? 4:38PM

2 MS. STEINMAN: Objection, asked and
3 answered.

4 THE WITNESS: I did not try to quantify
5 that, no. 4:38PM

6 BY MR. GRATZ:

7 Q Do you know whether that effect would be
8 positive or negative?

9 A I laid out the economic reasoning that I
10 believe points to it being detrimental, having harm. 4:38PM

11 Q But you don't know whether that economic
12 reasoning, in fact, played out in that way; right?

13 MS. STEINMAN: Objection.

14 THE WITNESS: I don't have the numerical
15 estimates on that. I think it's -- whatever its 4:39PM
16 economic reasoning or general theoretical arguments,
17 to the extent that the premises are sensible and
18 credible, I believe that the conclusions then
19 reasonably follow. And I believe those assumptions
20 were credible. 4:39PM

21 BY MR. GRATZ:

22 Q It is possible that upon examination of
23 the data through an econometric analysis, it would
24 turn out that the effect was either zero or positive
25 with respect to publishers' revenues? 4:39PM

1 Q When you say "likely" here, are you making 5:36PM
2 an empirical claim?

3 A I'm not putting a quantification on it.
4 This is I believe what I would consider theoretical
5 reasoning, that you're in -- in such a scenario, it's 5:37PM
6 likely or probable that a library that sees less
7 interest in its e-Books is going to be less inclined
8 to purchase licenses for those e-Books.

9 Q In other words, where you say that this is
10 likely, your view is that that result is the one 5:37PM
11 that would be predicted by economic theory but you
12 don't have specific empirical knowledge of an actual
13 probability?

14 MS. STEINMAN: Objection.

15 THE WITNESS: I don't put forth an actual 5:37PM
16 probability. I think what this is acknowledging is
17 it may not always be the case.

18 There might be instances where the demand
19 still would be similar, but under these
20 circumstances, it's reasonable to think that it's a 5:38PM
21 probable outcome that the demand would decline.

22 BY MR. GRATZ:

23 Q In your last answer, you said, "it may not
24 always be the case," but it's also true that it may
25 not ever be the case; is that right? 5:38PM

1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of California, do
3 hereby certify:

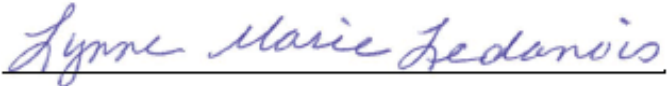
4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that a record of the proceedings was made by me
7 using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to
11 the original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript ☐ was ☒ wasn't requested.

14 I further certify I am neither financially
15 interested in the action nor a relative or employee
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19
20
21 Dated: June 13, 2022
22

23 
24

LYNNE MARIE LEDANOIS

25 CSR No. 6811